



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3092

Introduced 2/7/2014, by Sen. William Delgado

SYNOPSIS AS INTRODUCED:

105 ILCS 13/32 new

Amends the P-20 Longitudinal Education Data System Act. Provides that if an audit or evaluation or a compliance or enforcement activity in connection with legal requirements that relate to State-supported or school district-supported educational programs requires or is used as the basis for granting access to personally identifiable information, the State Board of Education or a public school shall designate parties only under its direct control to act as authorized representatives to conduct the audit, evaluation, or activity. Limits the disclosure of personally identifiable information by the State Board or a public school with respect to (i) a contractor, consultant, or other party to whom the State Board or school has outsourced services or functions; (ii) a party conducting certain studies for or on behalf of the State Board or school; (iii) any party for a commercial use; or (iv) the provision of services other than contracting, studies, and audits or evaluations. Limits the maintenance of personally identifiable information and provides for disclosure and notification. Limits appending education records with personally identifiable information obtained from other federal or State agencies through data matches. Provides for civil penalties. Effective immediately.

LRB098 15075 NHT 50039 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The P-20 Longitudinal Education Data System Act
5 is amended by adding Section 32 as follows:

6 (105 ILCS 13/32 new)

7 Sec. 32. Personally identifiable information limitations.

8 (a) In this Section:

9 "Education records" has the meaning ascribed to that term
10 in 34 CFR 99.3.

11 "Personally identifiable information" means (i) any
12 personally identifiable information under the federal Family
13 Educational Rights and Privacy Act of 1974 and (ii) the
14 personally identifiable information of teachers, other
15 educators, and school administrators, other than publicly
16 available, school-related information such as the name, school
17 location, and grade levels or subjects taught.

18 (b) If an audit or evaluation or a compliance or
19 enforcement activity in connection with legal requirements
20 that relate to State-supported or school district-supported
21 educational programs requires or is used as the basis for
22 granting access to personally identifiable information, the
23 State Board or a school shall designate parties only under

1 their direct control to act as authorized representatives to
2 conduct the audit, evaluation, or activity.

3 (c) The State Board or schools may not disclose any
4 personally identifiable information, including personally
5 identifiable information from education records of students,
6 without the written consent of eligible students, parents, or
7 guardians to a contractor, consultant, or other party to whom
8 the State Board or school has outsourced services or functions,
9 unless that outside party:

10 (1) performs an institutional service or function for
11 which the State Board or the school would otherwise use
12 employees;

13 (2) is under the direct control of the State Board or
14 the school with respect to the use and maintenance of
15 education records;

16 (3) limits internal access to education records to
17 those individuals who are determined to have legitimate
18 educational interests;

19 (4) does not use the education records for any purposes
20 other than those explicitly authorized in its contract;

21 (5) does not disclose any personally identifiable
22 information to any other party (i) without the prior
23 written consent of the eligible student, parent, or
24 guardian or (ii) unless required by statute or court order
25 and the party provides a notice of the disclosure to the
26 State Board or school board that provided the information

1 no later than the time the information is disclosed, unless
2 providing notice of the disclosure is expressly prohibited
3 by the statute or court order;

4 (6) maintains reasonable administrative, technical,
5 and physical safeguards to protect the security,
6 confidentiality, and integrity of personally identifiable
7 information in its custody;

8 (7) uses encryption technologies to protect data while
9 in motion or in its custody from unauthorized disclosure
10 using a technology or methodology specified by the U.S.
11 Secretary of Health and Human Services under Section
12 13402(h) (2) of Public Law 111-5;

13 (8) has sufficient administrative and technical
14 procedures to monitor continuously the security of
15 personally identifiable information in its custody;

16 (9) conducts a security audit annually and provides the
17 results of that audit to the State Board or the school that
18 provided personally identifiable information;

19 (10) provides the State Board or school with a breach
20 remediation plan acceptable to the State Board or school
21 prior to initial receipts of the personally identifiable
22 information;

23 (11) reports all suspected security breaches to the
24 State Board or the school that provided personally
25 identifiable information and education records as soon as
26 possible, but no later than 48 hours after a suspected

1 breach was known or would have been known by exercising
2 reasonable diligence;

3 (12) reports all actual security breaches to the State
4 Board or the school that provided personally identifiable
5 information and education records as soon as possible, but
6 no later than 24 hours after an actual breach was known or
7 would have been known by exercising reasonable diligence;

8 (13) agrees, in the event of a security breach or an
9 unauthorized disclosure of personally identifiable
10 information, to pay all costs and liabilities incurred by
11 the State Board or school related to the security breach or
12 unauthorized disclosure, including without limitation the
13 costs of responding to inquiries about the security breach
14 or unauthorized disclosure, of notifying the subjects of
15 personally identifiable information about the breach, of
16 mitigating the effects of the breach for the subjects of
17 personally identifiable information, and of investigating
18 the cause or consequences of the security breach or
19 unauthorized disclosure; and

20 (14) destroys or returns to the State Board or school
21 all personally identifiable information in its custody
22 upon request and at the termination of the contract.

23 (d) The State Board or schools may disclose personally
24 identifiable information from an education record of a student
25 without the consent of the eligible student, parent, or
26 guardian to a party conducting studies for or on behalf of the

1 State Board or school to (i) develop, validate, or administer
2 predictive tests, (ii) administer student aid programs, or (3)
3 improve instruction, provided that the outside party
4 conducting the study meets all of the requirements for
5 contractors set forth in subsection (c) of this Section.

6 (e) The State Board or schools may not disclose any
7 personally identifiable information, including personally
8 identifiable information from education records of students,
9 without the written consent of eligible students, parents, or
10 guardians to any party for a commercial use, including without
11 limitation marketing products or services, compiling lists for
12 sale or rental, developing products or services, or creating
13 individual, household, or group profiles, nor may such
14 disclosure be made for the provision of services other than
15 contracting, studies, and audits or evaluations as authorized
16 and limited by subsections (c) and (d) of this Section. Any
17 consent from an eligible student, parent, or guardian must be
18 signed and dated, must not have been signed more than 6 months
19 prior to the disclosure, must identify the recipient and the
20 purpose of the disclosure, and must state that the information
21 will be used only for that purpose and will not be used or
22 disclosed for any other purpose.

23 (f) The State Board or schools may not, directly or through
24 contracts with outside parties, maintain personally
25 identifiable information, including personally identifiable
26 information from education records of students, without the

1 written consent of eligible students, parents, or guardians,
2 unless the maintenance of the information is:

3 (1) explicitly mandated in federal or State statute;

4 (2) administratively required for the proper
5 performance of their duties under the law and is relevant
6 to and necessary for the delivery of services; or

7 (3) designed to support a study of students or former
8 students, provided that no personally identifiable
9 information is retained on former students for longer than
10 5 years after the date of the student's last enrollment in
11 a school.

12 (g) The State Board and schools shall publicly and
13 conspicuously disclose on their Internet websites and through
14 annual electronic notification to the chairperson of the House
15 of Representatives Elementary & Secondary Education Committee
16 and the chairperson of the Senate Education Committee the
17 existence and character of any personally identifiable
18 information that they, directly or through contracts with
19 outside parties, maintain. The disclosure and notification
20 shall include:

21 (1) the name and location of the data repository where
22 the information is maintained;

23 (2) the legal authority that authorizes the
24 establishment and existence of the data repository;

25 (3) the principal purpose or purposes for which the
26 information is intended to be used;

1 (4) the categories of individuals on whom records are
2 maintained in the data repository;

3 (5) the categories of records maintained in the data
4 repository;

5 (6) each expected disclosure of the records contained
6 in the data repository, including the categories of
7 recipients and the purpose of each disclosure;

8 (7) the policies and practices of the State Board or
9 school regarding storage, retrievability, access controls,
10 retention, and disposal of the records;

11 (8) the title and business address of the State Board
12 or school official who is responsible for the data
13 repository and the name and business address of any
14 contractor or other outside party maintaining the data
15 repository for or on behalf of the State Board or school;

16 (9) the procedures whereby eligible students, parents,
17 or guardians can be notified at their request if the data
18 repository contains a record pertaining to the student,
19 parent, or guardian;

20 (10) the procedures whereby eligible students,
21 parents, or guardians can be notified at their request on
22 how to gain access to any record pertaining to the student,
23 parent, or guardian contained in the data repository and
24 how they can contest its content; and

25 (11) the categories of sources of records in the data
26 repository.

1 (h) The State Board and schools may not append education
2 records with personally identifiable information obtained from
3 other federal or State agencies through data matches without
4 the written consent of eligible students, parents, or guardians
5 unless the data matches are:

6 (1) explicitly mandated in federal or State statute; or

7 (2) administratively required for the proper
8 performance of their duties under the law and are relevant
9 to and necessary for the delivery of services.

10 (i) Each violation of this Section by an organization or
11 entity that is not the State Board or a school is subject to a
12 civil penalty of up to \$1,000 for a first violation, up to
13 \$5,000 for a second violation, and up to \$10,000 for a third or
14 subsequent violation. Each violation involving a different
15 individual's personally identifiable information shall be
16 considered a separate violation for purposes of civil
17 penalties.

18 (j) The Attorney General shall have the authority to
19 enforce compliance with this Section by investigation and
20 subsequent commencement of a civil action to seek civil
21 penalties for violations of this Section and to seek
22 appropriate injunctive relief, including without limitation a
23 prohibition on obtaining personally identifiable information
24 for an appropriate time period. In carrying out an
25 investigation and in maintaining a civil action, the Attorney
26 General or any deputy or assistant Attorney General is

1 authorized to subpoena witnesses, compel their attendance,
2 examine them under oath, and require that any books, records,
3 documents, papers, or electronic records relevant or material
4 to the inquiry be turned over for inspection, examination, or
5 audit, pursuant to the Civil Practice Law and rules. Subpoenas
6 issued pursuant to this subsection (j) may be enforced pursuant
7 to the Civil Practice Law and rules.

8 (k) Nothing contained in this Section shall be construed as
9 creating a private right of action against the State Board or a
10 school.

11 (l) Nothing in this Section shall limit the administrative
12 use of personally identifiable information by a person acting
13 exclusively in the person's capacity as an employee of a
14 school, this State, a court, or the federal government that is
15 otherwise required by law.

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.